



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 16-03292
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 10, 2014. On December 21, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006 (2006 AG).

Applicant answered the SOR on January 24, 2017, and requested a decision on the record without a hearing. On February 10, 2017, the Government submitted its written case and, on February 13, 2017, sent a complete copy of the file of relevant material (FORM) to Applicant, including documents identified as Items 1 through 5. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on February 22, 2017, and

did not respond. Item 1 contains the pleadings in the case. Items 2 through 5 are admitted into evidence. The case was assigned to me on October 2, 2017.

On June 8, 2017, the DOD implemented new AG (2017 AG).¹ Accordingly, I have applied the 2017 AG.² However, I have also considered the 2006 AG, because they were in effect on the date the FORM was completed. I conclude that my decision would have been the same under either version.

Findings of Fact³

Applicant, age 28 and unmarried, has one eight-year-old child. Applicant received his high school diploma in 2007. He served in the U.S. Air Force from 2008 through 2012, when he received a general discharge for a pattern of misconduct involving some of his alleged SOR conduct (SOR ¶ 2.d). He has been employed full time as an automotive worker by the defense contractor sponsoring his security clearance since December 2014. He was granted a DOD secret clearance while in the Air Force.

Guideline F

The SOR alleges 10 delinquent debts totaling \$111,301, including a \$12,000 federal tax debt (SOR ¶ 1.a), two medical debts totaling \$81,804 (SOR ¶ 1.b and 1.g), and eight other consumer debts totaling \$18,008 (SOR ¶¶ 1.c through 1.f, and 1.h through 1.j). Applicant's admitted debts (SOR ¶¶ 1.d and 1.e) total \$7,923. Claiming that they were either resolved or in the process of being resolved, he denied the remaining debts. The credit reports establish each of the denied debts.⁴

Applicant accrued federal tax debt, totaling approximately \$23,000, due his failure to report 1099 income on his 2012 and 2013 tax returns. During those years, he worked for his father's company, and did not receive nor ask for a 1099 IRS tax form. As of June 2015, he had established a payment plan with the IRS to resolve his tax debt. Applicant did not assert nor provide any evidence that he made any payments pursuant to that plan. The IRS has applied his tax year 2014 and 2015 refunds to the balance owed. As of September 2016, the balance of the tax debt alleged in SOR ¶ 1.a

¹ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

² ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

³ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer (Item 1), and his SCA (Item 2).

⁴ Items 5 and 6.

was \$10,256. In his SOR answer, Applicant anticipated that his tax year 2016 refund of approximately \$2,000 would be applied to further reduce the balance.⁵

On a date not specified in the record, Applicant injured himself while working. He incurred hospital bills (SOR ¶¶ 1.b and 1.g) for which he did not have the money to pay. In his SOR answer, he claimed, without corroborating documentary evidence, that because a judge ruled in his favor on the workers compensation claim that he filed, the debts alleged in SOR ¶¶ 1.a and 1.g will be paid accordingly. He also claimed, without corroborating documentary evidence, that he was paying the debts alleged in SOR ¶¶ 1.c (\$100 per month), 1.f (\$100 per month), and 1.h (\$25.67 per month), and that he had resolved the debts alleged in SOR ¶¶ 1.i and 1.j.

Applicant attributed his delinquent debts to not having sufficient income to meet his financial obligations. He intends to resolve them by 2020. He has never sought nor received financial counseling, nor intends to do so.⁶ The record is silent as to specific details about Applicant's relevant income and expense history and any specifics concerning the financial impact that his past or present circumstances have had on his ability to pay debts.

Guideline E

The SOR also alleged four alcohol-related criminal arrests, including DUI arrests on two separate occasions in 2012 (SOR ¶¶ 2.a through 2.c and 2.e), and three traffic-related criminal arrests, including driving on a suspended license in 2013 and 2014 (SOR ¶¶ 2.f, 2.h, and 2.i). It also alleged Applicant's 2012 general discharge (SOR ¶ 2.d) and that a court granted a family member a "protection from abuse" order against him in 2014 (SOR ¶ 2.g).

In November 2011, Applicant was arrested for "public drunkenness" while walking home from a friend's house, where he had been consuming alcohol (SOR ¶ 2.a). After being held in jail overnight "until he sobered up," he was released without any criminal charges filed.⁷

In December 2011, Applicant was arrested for disorderly conduct while at his girlfriend's home to retrieve his property after a break up (SOR ¶ 2.b). His girlfriend called the police because he was intoxicated. He received a letter of reprimand from his Air Force commander for this incident. He also paid a fine of \$150 to the court.⁸

In February 2012, Applicant was arrested for and charged with DUI after failing a field sobriety test and roadside breath test, and a blood alcohol test that revealed a .12

⁵ Item 3 at 5 and 14. See *a/so* attachments to SOR answer.

⁶ Item 3 at 17.

⁷ Item 3 at 12.

⁸ Item 3 at 11 and 12.

BAC (SOR ¶ 2.c). He had been driving home from a bar, where he had been consuming alcohol. A court found him guilty and fined him \$375.⁹

In August 2012, Applicant was arrested for and charged with DUI after failing a roadside breath test and a blood alcohol test that revealed a .12 BAC (SOR ¶ 2.e). He had been driving to his sister's home from a bar, where he had been consuming alcohol. A court found him guilty, sentenced him to 30 days in jail, placed him on six months' probation, and fined him \$1,600.¹⁰

In February 2014, Applicant intervened in an altercation between two family members to get them to cease. In March 2014, one of those family members was granted a 14-month civil protection order against Applicant (SOR ¶ 2.g). He denied any wrongdoing or that any criminal charges were filed against him.¹¹

In January 2013 and, again in August 2014, Applicant drove a vehicle when he knew that his driver's license had been suspended in connection with his DUI convictions (SOR ¶¶ 2.f and 2.h). In 2013, he chose to drive because he was ready to leave a party and no one else was sober enough to drive him home. The record is silent as to whether Applicant had consumed any alcohol prior to doing so. He gave no reason as to why he chose to drive in 2014. He denied having been arrested for either violation.¹²

In 2012, Applicant paid a \$14 fine for exceeding the maximum speed limit by 14 miles per hour (unalleged).¹³ In May 2015, Applicant paid a fine, in an amount not specified in the record, for exceeding the maximum speed limit by 24 miles per hour (SOR ¶ 2.i). He denied having been arrested for either violation.¹⁴

In his FORM, Department Counsel identified, in bold and highlighted text, the areas in which Applicant failed to provide documentary evidence to support his mitigation case. He also advised Applicant of the opportunity to submit that evidence in his FORM response.

⁹ Item 3 at 13.

¹⁰ Item 3 at 13.

¹¹ Item 3 at 11 and 13.

¹² Item 3 at 18-19.

¹³ Because this offense was not alleged, I will consider it only to evaluate mitigation and whole person.

¹⁴ Item 3 at 13; Item 5.

Policies

“[N]o one has a ‘right’ to a security clearance.”¹⁵ As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.”¹⁶ The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹⁷

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”¹⁸ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR.¹⁹ “Substantial evidence” is “more than a scintilla but less than a preponderance.”²⁰ The guidelines presume a nexus or

¹⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁶ *Egan* at 527.

¹⁷ EO 10865 § 2.

¹⁸ EO 10865 § 7.

¹⁹ See *Egan*, 484 U.S. at 531.

²⁰ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.²¹ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.²² An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.²³

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."²⁴ "[S]ecurity clearance determinations should err, if they must, on the side of denials."²⁵

Analysis

Guideline F (Financial Considerations)

The concern under Guideline F (Financial Considerations) is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.²⁶

Applicant's admissions, corroborated by his credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(f) ("failure to file or

²¹ ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

²² Directive ¶ E3.1.15.

²³ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁴ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁵ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

²⁶ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's numerous delinquent debts remain unresolved. I cannot conclude that Applicant's financial indebtedness is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is not established. His work-related injury was a circumstance beyond his control, and he acted responsibly to address the associated medical bills by filing a worker's compensation claim. However, the record is insufficient to establish that his non-medical debts were largely attributable to that injury or any other circumstance beyond his control. However, even if it was sufficient, Applicant did not meet his burden to establish that he has acted responsibly to address them.

AG ¶ 20(d) is not established. I credit Applicant with initiating actions to resolve his medical debts, tax debt, and the debts alleged in SOR ¶¶ 1.c, 1.f, and 1.h through 1.j. However, resolution of his tax debt solely via offsets of his refunds does not constitute good-faith effort. Moreover, because he did not provide corroborating documentary evidence, I cannot conclude that he paid the debts alleged in SOR ¶¶ 1.i and 1.j, that he made payments pursuant to the plans established to pay the debts alleged in SOR ¶¶ 1.c, 1.f, and 1.h, or whether he has been or is able to follow through with his debt resolution plan.

AG ¶ 20(g) is not established. While Applicant negotiated a payment plan with the IRS, he presented no evidence to establish that he made any payments pursuant to that plan or that he made any specific arrangements with the IRS to resolve his tax

debt. There is no evidence to conclude that the IRS's interception of his refunds has been voluntary.

Guideline E (Personal Conduct)

The concern under this guideline, as set out in AG ¶ 15, includes: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information."

Applicant's pattern of criminal misconduct, as alleged in SOR ¶¶ 2.a through 2.c and 2.e through 2.i, establishes the following disqualifying condition under this guideline:

AG ¶ 16 (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Because the conduct underlying his general discharge involves the same conduct alleged separately in the SOR, I find the facts alleged in SOR ¶ 2.d to be duplicative. The underlying conduct is the security concern, not the general discharge which was merely a consequence of that conduct. Therefore, I find SOR ¶ 2.d in favor of Applicant.

The security concerns raised under this guideline have been mitigated by the following applicable factor:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

It has been over five years since Applicant's last DUI offense and over three years since his last suspended license offense. The protection order resulted from isolated circumstances that are unlikely to recur. The speeding tickets are not security significant in light of the record as a whole. Applicant's DUI and suspended license offenses were not minor and were security significant at one time, especially because they demonstrated a pattern of poor judgment and failure to follow rules. However, because so much time has passed without the recurrence of any similar offenses or any behavior that would suggest that they are likely to recur, I find that they do not cast doubt on his current reliability, trustworthiness, or good judgment.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his pattern of misconduct, but not those raised by his failure to pay delinquent tax and other debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraphs 1.c – 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Subparagraphs 1.h – 1.j: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): **FOR APPLICANT**

Subparagraphs 2.a – 2.i: For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge